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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1948

No. 177

J. R. MASON,

Petitioner,

vs.

PARADISE IRRIGATION DISTRICT,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO
PETITION FOR A WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Circuit.

Comes now the respondent, Paradise Irrigation District, and files its opposing brief to the petition of petitioner.

STATEMENT.

This case was before this Court heretofore upon an appeal from a decision of the United States Circuit Court of Appeals for the Ninth Circuit, affirming the interlocutory decree of the United States District Court, Northern District of California, Northern Division of California, and this Court upon January 17, 1946, rendered its decision affirming the decision of the United States Circuit Court.

Mason v. Paradise Irr. Dist., 306 U.S. 536, 66 S. Ct. 290.

Following this Court's decision above, the mandate of the Circuit Court was sent down to the District Court, and the District Court entered its final decree in bankruptcy, upon September 24, 1947 (Tr. 32). It is from this final decree that petitioner appealed to the United States Circuit Court of Appeals for the Ninth District. Thereafter Paradise Irrigation District, appellee in the Circuit Court and respondent herein moved to dismiss the appeal on the grounds that all matters raised by appellant were decided in the case of *Mason v. Paradise Irrigation District* (*supra*), and following oral arguments upon the motion to dismiss, the Circuit Court entered its order affirming the final decree of the District Court (Tr. 46). It is as to this decision of the Circuit Court that petitioner is seeking to secure a writ of certiorari.

REASON WHY WRIT SHOULD BE DENIED.

The writ of certiorari requested by petitioner should be denied because all points raised by petitioner in his petition were decided in the action of *Mason v. Paradise Irrigation District* (*supra*), and as to them the decision of the Supreme Court is *res adjudicata*.

In connection with the claims of respondent, the writer deems a brief chronological review of the proceedings will be determinative as to the merit of the petition.

In December 1935 the respondent District filed in the United States District Court, Northern District of California, Northern Division, a petition for debt readjustment under and pursuant to the provisions of paragraphs 78-80 of the Bankruptcy Act added by act of May 24, 1934, 11 U.S.C.A., Sections 301-303, the object of the petition being to confirm a plan of readjustment of the District's outstanding bonded indebtedness, which plan is substantially the same as the plan set forth in its petition for debt composition referred to in the succeeding paragraphs. On May 25, 1936, the Supreme Court of the United States in the case of *Ashton v. Cameron Co. Water Impr. District*, 298 U.S. 513, 80 L. Ed. 1309, held the sections involved under which the petition was filed, to be unconstitutional. The petitioner herein, J. R. Mason, being an owner of outstanding bonds of the District, moved the District Court to dismiss the petition, following the decision above mentioned and said petition was dismissed by the District Court upon October 28, 1936.

The present proceedings were initiated by the District petitioning the District Court under Public Act No. 302-75 of Congress, Chapter 657, 1st Session, approved August 16, 1937, which act was an amendment to "An act to establish a uniform system of bankruptcy throughout the United States" as approved July 1, 1898, for a composition of its bonded indebtedness.

In the papers forwarded to the Supreme Court in respect to the present petition were included "all that portion of the records in this Court which was transmitted by the Clerk of this Court to the Clerk of the Circuit Court of Appeals for the Ninth Circuit and printed by said clerk in the case of the appeal entitled: 'J. R. Mason v. Paradise Irrigation District No. 9925, in the United States Circuit Court of Appeals for the Ninth District.'" Herein when we refer to the record of case No. 9925 we will quote it as (Tr. P. No. 9925). Whenever herein we refer to the new transcript we will refer to it merely as (Tr. P.).

Petitioner J. R. Mason filed an answer to the petition of the District for a composition in which he raised the following points (Tr. P. 18-25—No. 9925):
(1) Alleging the purpose of the issuing of the bonds.
(2) That he was the owner of bonds of the face value of \$29,000.00 bearing interest coupons commencing July 1, 1936. (3) Denying that petitioner was entitled to have credited against his bonds certain voluntary payments of interest made by the District. (4) Denying that petitioner was unable to collect sufficient taxes or was insolvent. (5) Denying that creditors owning

not less than 92% in amount of the bonds and other evidences of debt affected by the plan had accepted the plan in writing, and particularly alleging that the Reconstruction Finance Corporation owns bonds aggregating \$447,000.00. (6) Denying the list of creditors of petitioner set forth in Exhibit C is accurate or correct. (7) Denying that claims of creditors of petitioner are of a single class. (8) Alleging that the plan of readjustment is not fair, equitable, nor for the best interests of the creditors and that it was not made in good faith. (9) Alleging the plan is unfair because other bond holders having bonds in the same geographical area are not required to scale down their debts and because mortgage holders and deed of trust holders are not required to scale down their debts, such mortgage holders and deed of trust holders hold mortgages upon land within the geographical area of the petitioner. (10) That the Court is without jurisdiction to entertain the petition brought under Public Act No. 302, which he alleges is unconstitutional; claiming unconstitutionality in that Public Act No. 302 is in violation of Section 8, Article 1 of the Constitution; also that under said act private property may be taken for public use without just compensation contrary to Amendment No. 5 of the Constitution of the United States; that no power has been delegated to Congress to pass legislation such as said act; that such act was passed in violation of the reserved rights of states as guaranteed by Article 10 of the Federal Constitution, and said act is in violation of the rights of citizens and particularly these respondents, guaranteed and reserved to them by

Amendment X to the Constitution; said act attempts to subject state governmental agencies to the jurisdiction of the Federal Courts contrary to the plan and scheme of government, as set out in the Constitution of the United States.

Upon the issues raised by the petition and answer the matter went to trial before the District Court on March 16, 1939, and upon conclusion of the trial the Court entered its Findings of Fact and Conclusions of Law (Tr. 26-53, No. 9925), finding as follows: (1) That the District was founded for the purpose of constructing, improving, maintaining and operating projects devoted chiefly to the improvement of land for agricultural purposes; (2) that the Court had jurisdiction; (3) that there was due publication of notice to bondholders; (4) that the filing of the petition was duly authorized by proper resolution; (5) that petitioner was insolvent and unable to meet its debts as they matured; (6) that the District by resolution duly passed, adopted a plan of composition as set forth in the petition; (7) that said plan of composition as proposed, was equitable and for the best interest of the creditors of the District and did not discriminate unfairly in favor of or against any creditor or creditors or class of creditors and that petitioner had complied with the provisions of Public Act No. 302; (8) that prior to the filing of the petition, the Reconstruction Finance Corporation, an agency of the United States, pursuant to contract with petitioner, purchased at the composition rate and became the owner of and ever since has owned, held

and controlled and now owns, holds and controls over 92% in the amount of the outstanding bonds and other outstanding indebtedness of the petitioner affected by the plan of composition; (9) that all of the indebtedness of petitioner affected is payable without preference and out of funds derived from the same source and all the creditors of petitioner constitute but one class; (10) that all the allegations and averments contained in the petition for confirmation of the plan of composition were true and that all denials of said petitioner were untrue; that on the 8th day of December 1936 the District paid to J. R. Mason upon his non-assenting bonds, interest in the sum of \$1077.66 and upon January 5, 1937, interest upon said bonds in the sum of \$1958.29, making a total of \$3055.95. (11) That the dismissal of the original petition of the District, which order of dismissal was entered October 28, 1936, was not *res adjudicata* as to this proceeding.

In pursuance of the Findings of Fact and Conclusions of Law, the District Court upon the 3rd day of February 1941, entered its interlocutory decree (Tr. 44-54, No. 9925) and an appeal was taken therefrom by J. R. Mason (Tr. P. 54, No. 9925). Upon May 14, 1942, the United States Circuit Court remanded said cause to the District Court to make specific findings bearing on the question of the maximum amount that the District was reasonably able to pay its bondholders in the circumstances, with or without the taking of additional evidence as the District Court in its discretion should determine, and to further clarify

findings upon the question whether the plan of composition provides for deductions from the amount to be paid, for interest coupons which were voluntarily paid by the Irrigation District (Tr. P. 173-74, No. 9925).

The rehearing came on April 20, 1943, and additional evidence was taken; upon November 24, 1942, the District Court entered and filed its Findings of Fact and Conclusions of Law on the points as to which the cause was remanded (Tr. P. 185-200 No. 9925), and upon the same date caused to be entered and filed its "Amendment to Interlocutory Decree" (Tr. 200-201 No. 9925), wherein the Court approved the original interlocutory decree but ordered no deduction be made for the \$3055.95 voluntarily paid by the District to Mason on interest.

Following the foregoing the transcript of the record was forwarded to the United States Circuit Court (Tr. 203-204 No. 9925).

The matter was eventually submitted to the United States Circuit Court of Appeals, which confirmed the interlocutory decree of the District Court as amended. From this decision the present petitioner, J. R. Mason, petitioned for a writ of certiorari to this Court, the Supreme Court of the United States, which petition was granted. Thereafter as stated hereinbefore, this Court in the action of *Mason v. Paradise Irrigation District* (*supra*) entered its decision on January 4, 1946, affirming and approving said decree. Thereupon the mandate of the United States Circuit

Court of Appeals was filed in the District Court. Thereupon the District Court upon the 24th day of September 1947, caused to be entered and filed its final decree in the above matter (Tr. P. 26-32).

It is from the final decree last mentioned, the petitioner herein J. R. Mason, appeals (Tr. 32-33). Upon April 27, 1948 the respondent District gave notice of motion to dismiss appeal (Tr. 45-47). Upon January 26, 1948, the petitioner herein, J. R. Mason, filed an opposition of notice to dismiss appeal (Tr. 52-62). Upon May 7, 1948, the Appellate Court ordered the motion of appellee to dismiss appeal and the opposition of motion to dismiss appeal be submitted, and on the same day caused to be entered its order "that said Motion to Dismiss be granted; that the appeal be dismissed, and that a decree be filed and entered accordingly." Upon May 7, 1948 the United States Appellate Court entered its "decree" dismissing the appeal (Tr. 65). It is as to this order of the United States Circuit Court dismissing the appeal that the petitioner seeks from this Court a writ of certiorari.

In petitioner's appeal from the final decree of the District Court his points on appeal are set forth in the record (P. 33-34) as follows: (1) The final decree is *ultra vires*, (2) the decree conflicts with California laws which control the obligations and duties of the debtor, (3) the decree contravenes the land laws of California controlling rents, issues and profits of land within its domain, (4) the decree impairs the vested property rights of bondholders in violation of the Fifth Amendment of the Constitution, (5) the decree

as applied to the still outstanding original bonds impairs a contract and trust obligation executed by the State of California and secured by Article I, Section 10, cl. 1 of U. S. Constitution, and Article I, Section 16, and Article 6, Section 13 of California Constitution, (6) the decree limiting acceptance of funds *in custodia legis* to 12 months is an error of law, (7) the injunctive provisions in the final decree as applied, are an error of law and a gift of public funds prohibited by Article IV, Section 31 of the California Constitution, (8) the decree, which provides full payment of the investment made by the RFC in the form of long term interest bearing bonds, but denies equal treatment to the lawful holder of valid binding and unpaid original 6% gold bond obligations, ordering him to take a compromise cash figure without interest, is discriminatory, and unfair, and is an error of law.

The petitioner has petitioned for a writ of certiorari, giving the following reasons why the writ should be granted:

1. That the District Court erred in permanently restraining suits to compel the assessment and collection of ad valorem land taxes required by applicable state law.

2. The District Court erred in ordering the fund *in custodia legis* to be paid to the bankrupt before all allowed claims upon that fund have been paid.

3. That the Court erred in not confining its final decree to the jurisdictional limits allowed by the United States Constitution.

4. The Court erred in failing to decide that the prior denial of discharge is *res adjudicata*.

5. The Circuit Court erred in granting the motion to dismiss the appeal.

ARGUMENT.

Each and every one of the foregoing points raised by the petitioner were determined adversely upon the appeal from the interlocutory decree; all of such matters were before the District Court, the Circuit Court, and the United States Supreme Court in the first proceedings; all were determined adversely to petitioner other than the fifth point raised, namely, that the Circuit Court erred in granting the motion to dismiss the appeal, which of course could not have been, as the order dismissing the appeal was not made until May 7, 1948.

As to petitioner's fourth point, "that the Court erred in failing to decide that the prior denial of discharge is *res adjudicata*;" this point was before the District Court on the original hearing held in March 1939, and the Court found in respect thereto as follows (Tr. P. 37-39 No. 9925) :

"That heretofore on the 21st day of December, 19 , petitioner herein filed in this court its petition for debt readjustment under and pursuant to the provisions of paragraphs 78 to 80 of the Bankruptcy Act added by Act May 24, 1934, 11 U.S.C.A., Sections 301 to 303. That by said proceeding, petitioner sought to confirm a plan of

readjustment of its outstanding bonded indebtedness, which is the same substantially as the plan submitted in the present proceeding. That on May 25, 1936, the Supreme Court of the United States decided the case of Ashton v. Cameron County Water Improvement District, 298 U.S. 513, 80 L. Ed. 1309, wherein said court held that said act of Congress approved May 24, 1934, Chapter 345, and designated as Sections 78, 79 and 80 of the Bankruptcy Act of the United States, was unconstitutional. That thereafter, pursuant to notice of memorandum to dismiss theretofore filed with this Court by certain objecting creditors, on the ground that the decision of the Supreme Court of the United States in said Ashton case aforesaid, rendered this court without jurisdiction in said proceeding, this court did on October 28, 1936, grant said motion of said objecting creditors to dismiss said proceeding. That no trial or judgment on the merits of said amended petition filed by petitioner, pursuant to said Act of Congress approved May 24, 1934, Chapter 345, and designated as Sections 78, 79 and 80 of the Bankruptcy Act of the United States was ever had.

"That this Court finds that said proceeding so dismissed was based upon a law holding null and void, and which conferred no jurisdiction upon the court, and that there was no trial or judgment on the merits in said proceeding. That this court finds that the proceeding now before this court, based upon an entirely different law and one which does confer jurisdiction upon this court, and that petitioner herein is not barred in this proceeding by res adjudicata, or otherwise."

The point that the Court erred in not confining its final decree to the jurisdictional limit allowed by the United States Constitution, has previously been decided in the Mason case (*supra*). As to the point the District Court erred in ordering the fund *in custodia legis* to be paid to the bankrupt before all allowed claims upon that fund had been paid was before this Court upon the appeal from the interlocutory decree; similarly the point that the District Court erred in permanently restraining suits to compel the assessment and collection of *ad valorem* land taxes required by state law, was before this Court upon previous appeal and decided in favor of respondent.

CONCLUSION.

All matters presented by this appeal or that could be presented, were determined in the case of *Mason v. Paradise Irrigation District* (*supra*); the points may be stated in different language but in fact they are the same. There is nothing further to be decided by this Court than was decided by it in the said Mason case. This litigation commenced in December 1937, and it is now August 1948, a period of over eleven years. It is time that the litigation be brought to a conclusion; the United States Circuit Court by dismissing the appeal determined that there are no new points raised by appellant.

The foregoing disposes of petitioner's "Reason Why the Writ Should Be Allowed." However, the petitioner in his "Questions Presented" asks if the time

limit of 12 months, after which period the money *in custodia legis* will be paid to the bankrupt, whether allowed claims have been paid or not, conflicts with 11 U.S.C.A. 106, sub. (b), and Judicial Code Secs. 851, 852, Title 28. The interlocutory decree which was affirmed by this Court in the Mason case above referred to provided among other things that the petitioner, J. R. Mason, be required to deposit any and all of his bonds with the disbursing agent within a thirty day period thereafter provided, or thereafter with the clerk of this Court, for payment in accordance with the decree or be forever barred from claiming or asserting as against petitioner or any individually owned property located within petitioner's district or the owners thereof, any claims or liens arising against said bonds * * * The interlocutory decree gave thirty days for the presentation of bonds of the petitioner; the final decree gives twelve months. The interlocutory decree was affirmed by the United States Circuit Court and its decision was affirmed by this Court in the said Mason decision. The final decree grants the petitioner twelve months in which to present his bonds; this is certainly an extension over the thirty day period provided in the interlocutory decree. In the opinion of the writer the twelve months does not commence to run until this appeal is finally settled, and petitioner will have twelve months after final decision upon the appeal in which to present his bonds and obtain his money, a process which could be fully completed with ease in one day. Certainly some time limit must be placed. It is of no moment to the District how long Mason be granted

to present his bonds, either one year, five years or ten years, but it is of moment to the Court to have a time limit of litigation and the twelve month period fixed in the final decree is a reasonable exercise of the Court's discretion.

In the matter see:

Mason v. Paradise Irrigation District, 306 U.S. 536, 66 S. Ct. 290;

Lorber v. Vista Irrigation District, 127 Fed. (2d) 628, 143 Fed. (2d) 282;

West Coast Life Ins. Co. v. Merced Irrigation District, 114 Fed. (2d) 654.

It is submitted that the petition should be denied.

Dated, Chico, California,

August 23, 1948.

Respectfully submitted,

P. M. BARCELOUX,

Attorney for Petitioner.

H. S. CLEWETT,

PETERS AND PETERS,

Of Counsel.